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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 537

NORMAN THOMAS MARSHALL,
ROBERT DEBENHAM SHOFFNER,
SALVATORE FEDERICO,
Petitioners,

vs

DR. GEORGE OLIVER, President of
Richmond Professional Institute,
RICHARD E. MacDOUGALL, Dean of Men of
Richmond Professional Institute,
and
RICHMOND PROFESSIONAL INSTITUTE,
Richmond, Virginia

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

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OPINIONS BELOW

The Supreme Court of Appeals wrote no opinion in affirming a decree entered by the Circuit Court of the City of Richmond by rejecting the petition and refusing the appeal. (See Appendix E, page 20). The trial judge's written opinion, refusing the petition for a permanent injunction, is not reported, but is set forth in the Appendix, C, pp. 8a-17a.

JURISDICTION

1. The Supreme Court of Appeals denied review on June 15, 1966. (Appendix E, p. 20).

2. The Federal question was raised as shown below.

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1257(3), petitioners having asserted below and asserting here deprivation of rights secured by the Constitution of the United States.

QUESTIONS PRESENTED

1. The petitioners, on September 16, 1965, presented themselves at the proper time and place to be registered as senior students of Richmond Professional Institute, a state institution, but the defendants refused to register them, and informed them that they would not be registered until they cut their hair and shaved their beards. The petitioners requested the Trial Court to grant a permanent injunction, directed to the defendants, prohibiting them from requiring a cutting of the hair and the shaving of the beards as a prerequisite to the registration of the pe-

titioners and others similarly situated for the 1965-66 session of school and other sessions of school in Richmond Professional Institute, and prohibiting the defendants from refusing to register the petitioners and others similarly situated because they do not cut their hair and shave their beards.

2. Does the ruling of the Trial Court invade the Constitutional right of privacy of the petitioners—the right to be left alone?

3. Does the judgment of the Trial Court and the refusal of the Supreme Court of Appeals to review said judgment deprive the petitioners of their Constitutional protection against violation of their Constitutional rights of freedom of speech? In other words, do we have here a question of the true and philosophical essence of freedom of speech and Constitutional protection of this freedom?

4. Does the judgment of the Trial Court constitute a denial of due process of law in violation of the Fourteenth Amendment?

5. Does the judgment of the Trial Court constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Ninth Amendment, the First Amendment, the Fourteenth Amendment, and Eighth Amendment to the Constitution of the United States.

STATEMENT

On September 17, 1965, the petitioners filed in the Circuit Court of the City of Richmond, Virginia, their petition for a permanent injunction against the defendants, praying that the Court direct the injunction to the defendants, prohibiting them from requiring a cutting of the hair and the shaving of the beards as a prerequisite to registration of the petitioners at Richmond Professional Institute, and prohibiting the defendants from refusing to register the petitioners and others similarly situated because they do not cut their hair and shave their beards.

On September 21, 1965, petitioners applied to the Circuit Court of the City of Richmond, Virginia, for a temporary injunction and restraining law. The application for a temporary injunction was denied and the cause was continued for a hearing on the merits on October 20, 1965.

When this case was heard on its merits on October 20, 1965, in the Circuit Court of the City of Richmond, Counsel for petitioners moved the Court for permission to amend the petition for permanent injunction. Permission was granted and the amendment to the petition for a permanent injunction were filed.

On November 23, 1965, the Judge of the Trial Court released his written opinion. He entered the final order from which the petitioners appealed on December 20, 1965. The Judge, in his Order, granted the motion of the defendants to dismiss two of the petitioners, Shoffner and Federico, on the grounds that these two petitioners had complied with the requirement of the school by getting hair cuts and shaves and being admitted. The petitioner, Norman Thomas Marshall, had not complied. The Judge,

in his order, denied the prayer of the amended petition for a permanent injunction. An appeal was taken to the Supreme Court of Appeals of Virginia. This Court refused to review the case on June 15, 1966.

The transcript of the hearing on September 21, 1965, on the petition for a temporary injunction, by stipulation of Counsel, and by order of the Court, was made a part of the evidence of the hearing on October 20, 1965, on the petition for a permanent injunction.

The petitioners, senior students at Richmond Professional Institute, had excellent scholastic records, had been a credit to the school, and never at any time had done anything to injure the name of the school. Norman Thomas Marshall was a senior English major, with a splendid average, who had been elected at one time Managing Editor of the school literary magazine, and had won scholarships. Robert Debenham Shoffner was a senior in Theatre Arts, and was one of the top three students in that department. His average was excellent. Salvatore Federico was a senior in Fine Arts, was president of the Fine Art Club, co-chairman of the Film Society, was attending this institution on a $2,000.00 scholarship from the Optimist Club, and had an excellent average.

On September 16th, when these petitioners presented themselves at the proper time and place to be registered as senior students of Richmond Profeessional Institute for the 1965-1966 session, the defendants refused to register the petitioners, and informed the petitioners that they would not be registered until they cut their hair and shaved off their beards.

The defendants said that they were acting against beards and long hair under authority granted them in a certain publication named "The Sign Post", which the administration of Richmond Professional Institute has sanctioned and ordained as a guide to student life. There is not one word in this publication that denies a student the right to grow his hair or his beard as he sees fit. Even Counsel for the defendants conceded this much in his pleadings.

HOW THE FEDERAL QUESTION WAS RAISED

1. The Federal question was raised before the Trial Court in the petition for a permanent injunction and in the amended petition for a permanent injunction (Appendix A, pp. 1a-5a and Appendix B, pp. 6a, 7a).

2. The Federal question was raised before the Trial Court in argument of the case (Tr. pp. 43-69, October 20, 1965).

3. It was repeated in petitioners' Petition for Appeal, seeking review of their cases by the Commonwealth's highest court (pp. 7-48).

REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE DEFENDANTS' DENYING RE-REGISTRATION TO THE PETITIONERS IS UNCONSTITUTIONAL BECAUSE IT INVADED THE CONSTITUTIONAL PRIVACY OF THE PLAINTIFFS AND THEREBY VIOLATED THE LETTER AND SPIRIT OF THE NINTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

Griswold vs. State of Connecticut, 33 L.W. 4587: This is the case in which the Supreme Court of the United States declared unconstitutional the birth control statutes of the state of Connecticut. Much of which the Supreme Court said in its opinion is quite applicable to the present case.

Mr. Justice Goldberg said in his majority opinion: "In a long series of cases this Court has held that where fundamental personal liberties are involved, they may not be abridged by the state simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. Where there is a significant encroachment upon personal liberty, the state may prevail upon showing a subordinating interest which is compelling. The law must be shown necessary and not merely rationally related to the accomplishment of a permissible state policy.".

He then said: "Although the Connecticut birth control law obviously encroaches upon a fundamental personal liberty, the state does not show that the law serves any subordinating state interests which is compelling. The law must be shown necessary, and not merely rationally related to the accomplishment of a permissible state policy."

Just as the Supreme Court of the United States holds in this case that it is not necessary to permit the states to invade the privacy of the marriage bed under the pretense of promoting purity and righteousness in the sex habits of the people, it certainly by way of analogy seems that the Richmond Professional Institute, a state supported college, should not be permitted to force students to cut their hair and shave their beards as a prerequisite to registration and

being admitted to their school, under the pretense of building an image for Richmond Professional Institute or placating prejudiced segments of the public.

Mr. Justice Goldberg in this case reaffirms the Constitutional right "to be left alone—the most comprehensive of rights and the right most valued by civilized men." He said: "In sum, the Ninth Amendment simply lends strong support to the view that the liberty protected by the Fifth and Fourteenth Amendments from infringement by the Federal government or the state is not restricted to rights specifically mentioned in the first eight amendments."

II.

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE DEFENDANTS' DENYING RE-REGISTRATION TO THE PETITIONERS IS UNCONSTITUTIONAL BECAUSE IT IMPOSES UPON THE PETITIONERS AN INVALID RESTRAINT OF FREEDOM OF EXPRESSION GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

The Supreme Court of the United States, in the case of N.A.A.C.P. vs. Alabama, 357 U.S. 449, 462: "We protected the freedom to associate and privacy in one's association noting that freedom of association was a peripheral First Amendment right. The Court then said: "In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. In like context,

we have protected forms of association that are not political in the customary sense but pertain to the social, legal, and economic benefit of the members."

In the case of Mire v. Nebraska, 262 U.S., 390, the Supreme Court said: "In other words, the state may not consistently with the spirit of the First Amendment contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought, and freedom to teach—indeed the freedom of the entire university community." The Court then said: "Without those peripheral rights the specific rights would be less secure."

The defendants' denying re-registration to the petitioners because of their refusal to cut their hair and shave their beards penalizes the petitioners for exercising a constitutional right of personal expression and self-expression by way of a well-rooted symbolic language in our society, and thereby imposes upon the petitioners and others similarly situated an invalid restraint of freedom of expression guaranteed by the First and Fourteenth Amendments to the United States Constitution.

In the case of West Virginia State Board of Education vs. Barnette, 63 S.Ct. 1178; 319 U.S. 624. the Court said:

> "There is no doubt that, in connection with the pledge, the flag salute is a form of utterance. Symbolism is a primitive but effective way to communicating ideas.

> The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind."
>
> "Over a decade ago Chief Justice Hughes lead his Court in holding that the display of a red flag as a symbol of opposition by peaceful and legal means to organized government was protected by the free speech guaranties of the Constitution."
>
> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what would be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us."

The conformity that the defendants seek to impose on the petitioners in the case at bar is not necessary to the legitimate interests of the defendants. The type of conformity demanded by these defendants carries a striking resemblance to that demand in totalitarian lands. In prewar Germany and Japan the students wore the same uniforms—looked and dressed alike. And in Communist China today, the people dress alike.

III

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE DEFENDANTS' DENYING RE-REGISTRATION TO THE PETITIONERS IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The case of James A. Forstner vs. City and County of San Francisco, recently decided in the District Court of Appeal of the State of California, First Appellate District, Division Three, deals with a probation officer of the Juvenile Court, who was dismissed from his job because of his refusal to shave his beard on order of the chief probation officer. The chief probation officer decided that the plaintiff was guilty of insubordination. The Civil Service Commission upheld the chief probation officer. The Superior Court ruled in favor of the probation officer and restored his position to him. The District Court of Appeals of the State of California sustained the Superior Court. The Court said: "A beard is a very personal embellishment. Unlike items of dress, it cannot be donned and doffed. An intelligent wearer of a beard no doubt regards it as enhancing his appearance." The Court held that there was not sufficient evidence presented to justify dismissal of the probation officer from his position.

The defendants' denying re-registration to the plaintiffs on the basis of a regulation that is stated in general terms, that does not adequately describe proscribed conduct, that in the creating and administering of which the student body had and has no voice, is arbitrary, capricious, unrealistic, and unreasonable, and violates substantive and procedural due process for the plaintiffs and others similarly situated.

Signpost 1965, the Guide to Student Life at the Richmond Professional Institute, on pages 12 and 13, we find the following excerpts:

". . . It is also the student's responsibility to know and abide by all standards of the College, academic, honor and social. This publication is intended to serve as a guide in this respect and lack of familiarity with its contents and other publications and notices of the college will not serve to exempt one from adhering to College policy."

". . . The college will be judged by the actions of its students. Therefore it is necessary that they maintain acceptable standards in their dress and comportment both on campus and in the neighborhood."

"Courtesy dictates that dress be suitable to the place and the occasion. In line with this thinking, Bermuda shorts, slacks, blue jeans and hair rollers are not considered suitable attire for the women for the cafeteria, the library, the classroom, the dormitory parlors, nor the streets of Richmond. In these same situations, jeans and Bermuda shorts are considered unsuitable attire for male students. For picnics or games in Shafer Court, suitable Bermudas or slacks are in order for both male and female students. Since there are no classes on Saturday, it is considered an informal day and suitable informal attire is allowed around the campus during the day and until 6 P.M. This does not apply to the library."

"If, in the judgment of the administration, a student is unable to deport himself and dress in a manner acceptable to general standards of a school or business situation, he will be subject to disciplinary action."

Dixon vs. Alabama State Board of Education, 294 Fed. 2nd 150 (1961): Due process requires notice and some opportunity for a hearing before students at a tax supported college can be expelled for misconduct.

The defendants herein contend that the right to attend a public college or university is not a constitutional right. That argument was emphatically answered by the Supreme Court in the Cafeteria and Restaurant Workers Union case, 81 S.Ct. 1748, when it said; . . . 'One may not have a constitutional right to go to Baghdad, but the government may not prohibit one from going there unless by means consonant with due process of law.' "

To dismiss a student without reference to some rule adequately describing proscribed conduct violates substantive and procedural due process alike.

We find in the Transcript of September 21, 1965, page 78, the following questions and answers. The Assistant Attorney General of Virginia is asking the questions and Dr. George Oliver, the President of the school, and a defendant herein, is answering the questions.

Q. In order to save time I will ask you by way of leading questions, is it not true that these three gentlemen in this case have all been denied admission for this semester at the Richmond Professional Institute on the ground that they have failed to cut their hair and shave their beards as they have been asked to do by the administrative officials?

A. That is true.

The questions and answers continued between the two same parties in the same transcript, (pages 79-82):

Q. All right, sir. Now would you mind telling us who, if anybody, within the institution, within Richmond Professional Institute, has adopted this rule with reference to beards and haircuts; and, if there is such a rule with reference to beard and haircuts, would you tell the Court what it is?

A. The principal statement is in the Signpost, which has to do with the general appearance of the individual rather than an itemized statement of everything which is involved in an unacceptable appearance.

As executive officer, or as chief resident officer of the institution, the Board of Visitors has delegated to me authority for the administration of the institution, by their appointment of me to that position. Consequently, the regulations which appear in that Signpost are the product of the administration of the college. Now, there is no specific written regulation in the Signpost which says there shall not be beards nor long hair. The general statement as to personal appearance, which is regarded by the administration as undesirable having adverse effect on the institution is covered in the general statement.

The defendant, Dr. Oliver, testified on page 86 of this same Transcript that he made an exception to his rule against beard when a Jewish boy from Israel came by. He said he made exceptions for boys who played parts in "The Common Glory" and "Lost Colony". At this time Dr. Oliver was asked to distinguish between a Gentile beard and a Jewish beard, and also to distinguish between a religious beard and a secular beard. He apparently knew no difference, and when asked why he made a distinction, he said that his distinction was not in terms of beard, but in terms of the impulse.

On page 90-91 of the same Transcript, the defendant, Dr. Oliver, said: "We don't specify any length, specific length." The Court asked him what did he specify. Dr. Oliver said: "We specify a reasonably normal haircut. We specify no beard. We make no specification with regard to mustaches."

Counsel for the Petitioners asked Dr. Oliver on page 91 of this Transcript: "How long can a mustache get before it is too long?" Dr. Oliver answered: "There is no limitation on the mustaches. If a man wants to take a chance on walking down the halls with a quite long one, he can go right along."

He was then asked the following question and gave the following answer:

Q. Let me ask you something, Dr. Oliver, wouldn't a mustache, even though the face were cleanly shaven, a mustache reaching from ear to ear, wouldn't that be more obnoxious than what they have now?

A. No, not from my point of view.

The fact that the Assistant Attorney General of Virginia, when he questioned the defendants, commencing on page 78 of the Transcript of September 21, 1965, raised the question of the image of the school as related to appropriations received from the State Legislature goes a long way to demonstrate the moving spirit behind the unconstitutional harassment of these students.

It is obvious from Dr. Oliver's testimony that the language in the Signpost is not a rule against beard and long hair, and that his requirement that the petitioners shave

their faces and cut their hair before being permitted to register, is arbitrary, capricious, and unreasonable. It is obvious that the plaintiffs and other students similarly situated have no voice in the creating and administering any so-called rules in the Signpost—and certainly are not given any voice in the creation and administering of this non-existing rule against beard and long hair. This imaginary fear that the defendants have built up against beard and long hair cannot be raised to the dignity of a compelling state interest, notwithstanding the clever verbal gymnastics of the defendants herein. When the petitioners enrolled at Richmond Professional Institute, they certainly did not know of any rules against beard and long hair that the defendants would create by way of inference and interpretation from vague and meaningless language in the Signpost. When they attempted to register for the 1965-66 session of school, they learned to their sorrow that their contracts with the school would be dishonored by the defendants' resolution and determination to enforce an arbitrary and capricious non-existing rule against beard and long hair. It is obvious from the statement of the facts herein and from the entire record of this case that these petitioners and other students similarly situated had no fair, practical, and worth-while right of appeal. The most effective proof of this fact was the granting of relief to one of the petitioners in a so-called appeal procedure, and the taking of this relief from him within two hours. When the Judge of the Trial Court overruled the demurrer of the Attorney General's office, and when the Assistant Attorney General, Counsel for the defendants, failed to file any cross assignment of error to this ruling of the Trial Court, both

the Trial Judge and the Assistant Attorney General were conceding in substance that the so-called right of appeal did not in practice exist and was futile, to say the least.

While the problem is essentially one of equal protection, certain elements of substantive due process turn out to be of great significance in determining the minimum content of equal protection. A doctrine which encapsulates the vital connection between due process and equal protection, in testing the reasonableness of conditions which restrict a state-supplied opportunity, is the doctrine of unconstitutional conditions. See NAACP v. Alabama ex rel, Flowers, 377 U.S. 288, 307, 309, 1964.

The doctrine of unconstitutional conditions generally holds that enjoyment of governmental benefits may not be conditioned upon the waiver or relinquishment of significant constitutional rights, in the absence of some compelling social interest which justifies the subordination of those rights under circumstances.

IV

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE DEFENDANTS' DENYING RE-REGISTRATION TO THE PETITIONERS IS UNCONSTITUTIONAL BECAUSE IT CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENT.

In the case of Williams v. State, 125 Ark. 287, 188 S.W., 826, 827, 1916: The Court held that a four-months sentence of solitary confinement for a misdemeanor is cruel and unusual punishment.

Punishment does not have to be barbaric to be "cruel". Several times Courts have held that "brutality" extends beyond the mere infliction of physical pain. Where the mode of punishment inflicts psychological distress on a person, such punishment may be both "cruel and unusual".

In the case of Trop v. Dulles, 356 U.S. 100, 1958, the United States Supreme Court said: "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man."

On another occasion, the United States Supreme Court said: "Even one day in prison would be cruel and unusual punishment for the 'crime' of having a common cold."

A disrupting and sabotaging of the petitioners' education for no reason more than the fact that the petitioners wore their hair and beards in a manner that displeased the defendants constitute cruel and unusual punishment. The United States Supreme Court said in the case of Trop v. Dulles, Supra., that "there may be involved no physical mistreatment, no primitive torture." There may be involved only "the total destruction of the individual's status in organized society."

The Supreme Court of Appeals of Virginia rejected the petition and refused the appeal—"the Court being of opinion that the issues in controversy are moot." (Appendix E, p. 20a).

It is not plain as to what the Supreme Court of Appeals is referring to when it says that the issues in controversy are moot. If the Court refers to the fact that two of the petitioners—Shoffner and Federico—conformed to the "beard and hair" requirement and returned to classes, it appears timely to quote from the Trial Judge, in the Transcript of September 21, 1965, p. 100. The Judge made this observation: "I think what you have here is a situation where if they are insisting on this as a matter of principle, they can as well serve their principle by complying with the regulations until such time as the Court has had an opportunity to determine the merits of this controversy between them, on the side of the individual liberty, and between the Richmond Professional Institute, on the side of the educational institution of higher learning."

As to the other petitioner, Norman Thomas Marshall, the Judge said in his opinion (Appendix C, p. 17a): "In view of the fact that Mr. Marshall has not so acted, however, the right of appeal is not denied to him and the decision of this Court may be reviewed. The motion to dismiss the plaintiffs, Shoffner and Federico, is granted."

It is difficult to see why the right of appeal should be denied to Shoffner and Federico, in view of the fact that the Judge himself suggested in substance that they go back to school and fight their principles in Court.

It is also difficult to see how the Supreme Court of Appeals rejected the petition and refused the appeal on the grounds that the issues in controversy are moot. Dr. Oliver, a defendant herein, and the President of the state institution involved herein, made it plain in the Transcript of September 21, 1965, pp. 86-90, that he had not the slightest intention of accepting these petitioners until they performed to the capricious and arbitrary requirements that they shave their beards and cut their hair a certain way. He was asked the following questions and gave the following answers:

Q. If these three gentlemen present themselves there to be registered tomorrow, would they be turned down, if they look exactly as they look now?

A. Yes, sir, they would.

Q. For what reason?

A. For the reason of the regulation that we have been discussing.

Q. The regulation in this book here that we have?

A. The regulations which refer to general appearance. Yes sir.

Before closing, it might be well to observe that the prayer of the petition for a permanent injunction was amended by permission of the Court to include not only the 1965-66 session of school, but other sessions. (Appendix A and B, pp. 1a-7a.)

CONCLUSION

For the following reasons, I respectfully submit that the petitioners have been denied their constitutional rights and that this Petition for a Writ of Certiorari should be granted.

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APPENDIX A

VIRGINIA:

IN THE CIRCUIT COURT OF THE
CITY OF RICHMOND

NORMAN THOMAS MARSHALL,
ROBERT DEBENHAM SHOFFNER,
SALVATORE FEDERICO,
Plaintiffs,

vs.

DR. GEORGE OLIVER, President of
Richmond Professional Institute,
RICHARD E. MacDOUGALL, Dean of Men of
Richmond Professional Institute and
Richmond Professional Institute,
Richmond, Virginia,
Defendants.

To The Honorable Judges Of Said Court:

The plaintiffs represent as follows:

1. They are senior students at Richmond Professional Institute, and at all times since their matriculation at this institution, they have been a credit to the school, and never

at any time have they done anything, by commission or omission, to bring this school into disrepute or to taint or degrade its good name.

2. Norman Thomas Marshall is a senior English major in Richmond Professional Institute, who has averaged in his major subject 2.5 out of a possible 3. He was elected Managing Editor of the "Image"—the school literary magazine last year. He has won scholarships.

3. Robert Debenham Shoffner is a senior in Theater Arts, and is one of the top three students in the Theater Arts Department, which has around fifty students. His grade point average in his major field, Theater Arts, is 2.7 out of a possible 3 points.

4. Salvatore Federico is a senior in Fine Art at Richmond Professional Institute, attending school on a $2,000.00 scholarship from the Optimist Club of Arlington County. He is President of the Fine Art Club, Co-chairman of the Film Society, and has a 2.1 grade average.

5. On September 16, 1965, the Plaintiffs presented themselves at the proper time and place to be registered as senior students of Richmond Professional Institute for the 1965-1966 session, but the defendants refused to register the plaintiffs, and informed the plaintiffs that they would not be registered until they got hair cuts and shaved off their beards. Classes will commence at Richmond Professional Institute on Monday, September 20, 1965, and the last day on which any student can register for this semester will be Friday, September 24, 1965.

6. The defendants contend that they are acting against beards and long hair under authority granted them in a certain publication named "The Sign Post", which the administration of Richmond Professional Institute has sanctioned and ordained as a guide to student life at this school. However, there is not one word in this publication that denies a student the right to grow his hair or his beard as he sees fit.

7. The capricious, arbitrary, cruel, and unconstitutional refusal of the defendants to register these three honorable, deserving, and talented senior students for the 1965-66 session at Richmond Professional Institute, unless the plaintiffs get hair cuts and shave their beards, denies the plaintiffs and others similarly situated due process of law under the Fourteenth Amendment to the Constitution of the United States of America and Article I, Section 11 of the Constitution of Virginia.

8. The refusal of the defendants to register the plaintiffs, unless they cut their hair and shave their beards, denies the plaintiffs and others similarly situated equal protection of the law under the Fourteenth Amendment of the Constitution of the United States of America.

9. When the defendants, agents of Richmond Professional Institute, a state-supported school, demand that the plaintiffs cut their hair and shave their beards as a prerequisite to registering and completing their education at Richmond Professional Institute, the defendants are invading the constitutional privacy of the plaintiffs, and, in essence, are demanding pusillanimous surrender of the wholesome spirit of individuality and non-conformity in exchange for registration.

10. Since long hair and prolific beard frequently connote deep religious convictions or profound philosophical and scholarly proclivities, the hair and beard are a well-rooted symbolic language in our society, and the refusal of the defendants to permit the plaintiffs to register and continue their education at Richmond Professional Institute because of the prejudice or political motivations of the defendants, directed at long hair and heavy beard, imposes upon the plaintiffs an invalid restraint of freedom of expression guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

11. The refusal of the defendants to register the plaintiffs because of the hair on their heads and the beards on their faces is an unconstitutional attempt to invade and destroy that unique empathy that pervades the warm friendship and dedicated fellowship of the plaintiffs and those similarly situated, who take pride in long hair and heavy beards, and it, in essence, deprives the defendants and those similarly situated of the right to choose their own associates voluntarily, to associate with their own friends—thereby depriving them of due process of law and equal protection of the law, in violation of the Fourteenth Amendment of the United States Constitution, and Article I, Section 11 of the Constitution of Virginia.

12. The refusal of the defendants to register the plaintiffs violates Section 58 of the Constitution of Virginia.

13. The requirement by the defendants that the plaintiffs cut their hair and shave their beards before they can be registered as senior students of Richmond Professional Institute constitutes cruel and unusual punishment, in vio-

lation of Amendment VIII of the Constitution of the United States, and Article I, Section 9, of the Constitution of Virginia.

Plaintiffs pray that an injunction be directed to the defendants prohibiting them from requiring a cutting of the hair and the shaving of the beards as a prerequisite to the registration of the plaintiffs and others similarly situated for the 1965-66 session of school at Richmond Professional Institute, and prohibiting the defendants from refusing to register the plaintiffs and others similarly situated because they do not cut their hair and shave their beards.

The plaintiffs reserve the right to amend this pleading as circumstances dictate or as it may be advised.

NORMAN THOMAS MARSHALL
ROBERT DEBENHAM SHOFFNER
SALVATORE FEDERICO

By HOWARD H. CARWILE
Counsel

HOWARD H. CARWILE, p.q.
Attorney at Law
10 South Tenth Street
Richmond, Virginia

APPENDIX B

VIRGINIA:

IN THE CIRCUIT COURT OF THE
CITY OF RICHMOND

NORMAN THOMAS MARSHALL,
ROBERT DEBENHAM SHOFFNER,
SALVATORE FEDERICO,
Plaintiffs,

vs.

DR. GEORGE OLIVER, President of
Richmond Professional Institute,
RICHARD E. MacDOUGALL, Dean of Men of
Richmond Professional Institute,
RICHMOND PROFESSIONAL INSTITUTE,
Richmond, Virginia,
Defendants.

To The Honorable Judges Of Said Court:

The plaintiffs come by counsel and move the Court for permission to amend their Bill for Permanent Injunction as follows:

Starting at the word "denies", in paragraph 7 of the Bill, strike out everything to the end of paragraph 7 and substitute the following in the place of the words and lines

struck out: "deprives the plaintiffs and others similarly situated of life, liberty, and property, without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America and Article I, Section 11 of the Constitution of Virginia."

At the end of paragraph 8 of the Bill, change the period to a comma and add the following words: "and abridges the privileges and immunities of the plaintiffs as citizens of the United States, in violation of the Fourteenth Amendment to the Constitution of the United States."

At the end of paragraph 9 of the Bill, change the period to a comma and add the following words: "and thereby are violating the letter and spirit of Amendment Nine of the Constitution of the United States."

At the end of paragraph 12 of the Bill, change the period to a comma and add the following words: "and Section 1 of the Constitution of Virginia and the Fifth Amendment of the United States Constitution.

In the prayer of the Bill for Permanent Injunction, right after the word "school", add a comma and the following three words and another comma: "and other sessions".

NORMAN THOMAS MARSHALL
ROBERT DEBENHAM SHOFFNER
SALVATORE FEDERICO

By HOWARD H. CARWILE
Counsel

HOWARD H. CARWILE, p.q.
Attorney at Law
10 South Tenth Street
Richmond, Virginia

APPENDIX C

CIRCUIT COURT OF THE
CITY OF RICHMOND

Richmond, Virginia
November 23, 1965

Howard H. Carwile, Esquire
10 South Tenth Street
Richmond, Virginia 23219

Richard N. Harris, Esquire
Assistant Attorney General
Supreme Court-Library Building
Richmond, Virginia 23219

Re: *Norman Thomas Marshall, et als.* v. *Dr. George Oliver, President, etc., et. al.—Case No. B-2932*

Gentlemen:

This proceeding is before the Court upon the plaintiffs' bill for an injunction as amended by leave of Court on October 20, 1965; upon the demurrer, motion to dismiss and answer filed by the defendants and adopted as to the amended bill; upon the stipulation of counsel that the evidence adduced at the hearing upon the motion for a temporary injunction on September 21, 1965, be considered as evidence upon the merits of the cause; upon the evidence adduced at the hearing held on October 20, 1965, and upon the argument of counsel. Exceptions having been duly

taken to various rulings of the Court heretofore and being contained in the transcript, no further mention thereof is deemed necessary except as will hereinafter appear.

The issue is clear and requires determination of the question of whether the action of the defendants in refusing to permit the plaintiffs to register as students at Richmond Professional Institute for the 1965-1966 Session, upon the ground that their personal appearance at the time of their offer to register did not conform to the rules and regulations of the Institute with respect to such appearance, constituted a violation of some right or rights guaranteed to the plaintiffs by the Constitutions of Virginia and of the United States of America. Although in fact there were three separate applications to register, one by each of the plaintiffs, and three separate refusals by the defendants, they will be treated as one in the interest of simplicity.

The Court finds as facts established by the evidence that each of the plaintiffs attempted to register as a student for the current session at Richmond Professional Institute on September 16, 1965, and their applications were denied on that date. The Dean of Men, Dr. Richard E. MacDougall, informed Messrs. Marshall and Federico that their appearance was not acceptable under the standards set by the Institute and, in order to be permitted to register, they must first get a haircut and shave their beards. Mr. Shoffner was advised that he must cut his hair and sideburns in order to be eligible.

At the hearing on the motion for a temporary injunction held in chambers on September 21, 1965, each of the plaintiffs apparently still had essentially the same beard, hair length and sideburns as they had displayed on September 16th. By way of description, which is quite difficult, suffice it to say that the hair of each plaintiff was long, flowing and ended in the back at a point just above the shoulder line; that the beards of Messrs. Marshall and Federico were of no mean length, and that Mr. Shoffner's sideburns extended down the cheeks to a line even with the mouth and then in toward the point of symphasis of the jaw. At the second hearing on October 20th, Messrs. Federico and Shoffner had had their hair cut and their faces shaved and had been admitted as students. Mr. Marshall's appearance was essentially the same as it had been before and he testified that he had not been permitted to register at RPI.

Two of the plaintiffs, Messrs. Marshall and Shoffner, initiated administrative appeals from the decision of Dean MacDougall, the Dean of Men, to Dr. Renneisen, the Dean of Students. In the case of Mr. Marshall, his testimony was that he had "filed" his appeal on September 24, 1965, the last day for registration, but had received no later advice as to its result. Mr. Shoffner appealed on September 21, 1965, and on September 24, 1965, after an interview with this student on September 22, 1965, Dr. Renneisen apparently held that Mr. Shoffner's situation was somewhat unique and granted the appeal "temporarily." A little later on the same day, the twenty-fourth, Dean MacDougall advised Mr. Shoffner that his case had been reconsidered and he was not permitted to register.

The reasons assigned by the plaintiffs for their unwillingness to comply with Dean MacDougall's instructions were similar. They are set out in the transcript of the September 21st hearing on pages 27-29 (Marshall), 38 (Federico), and 48-49 (Shoffner).

The Court is unable to discern, either in the statements of the plaintiffs in response to inquiries by their attorney or in their responses to questions by the Court, any indication that they were motivated by religious convictions. However, it was obvious from the demeanor of the plaintiffs in both of their appearances before the Court, that they were sincere in their adherence to the "principles" in which they expressed belief. All three felt that they had a "right" to wear their hair as they saw fit; to wear a beard, or long and full sideburns in lieu thereof, if they so desired, and that the policy of the Richmond Professional Institute was unreasonable and arbitrary as applied to them or to others similarly situated.

Turning now to the factual situation with respect to the Richmond Professional Institute, the evidence reveals that a rule or regulation exists requiring "a reasonably normal haircut" and prohibiting the wearing of a beard, although there is no restriction on the wearing of a mustache. This rule was first brought to the attention of the student body and of the three plaintiffs here in May, 1965, at the latest, by the Bowman incident. It was again brought to the attention of the plaintiffs by Dean MacDougall at the time of their first attempts to register. The chain of command, so to speak, terminated in Dean MacDougall and it was his function to examine individual students and determine whether there had been compliance with the rule.

Dr. George Oliver testified in behalf of the defendants and, though admitting that there was no specific written regulation in the *Signpost,* the guide to student life at the Richmond Professional Institute, which proscribed long hair and beards on male students, pointed out that personal appearance was covered in the provisions under the topic "Decorum and Dress." In point of fact the student guidebook recites that registration implies that the student will familiarize himself with the rules and regulations governing the conduct of students. The President went on to say that the Administrative Council, made up of all of the Deans of the college and other top administrative personnel, had adopted the policy which he, as Chief Executive Officer, enforced.

The considerations which motivated Dr. Oliver and the Council were two in number, the first being the educational responsibility of the institution to provide reasonable guidance and "standards of dress, appearance and decorum as an education matter." The second principal factor or consideration was that "the general appearance of the student body on our neighbors and on people who continually pass by on the street has an adverse or favorable effect on the image of the institution, the public image * * *"

By statute the Board of Visitors of the Richmond Professional Institute is a corporation under the style: "Richmond Professional Institute." (§ 23-49.2, Code of Virginia, 1950, as amended.) The real and personal property of the Institute stands in the name and is under the control of this corporate body, though such property is in fact and law property of the Commonwealth. (§ 23-49.3, Code) The Board of Visitors is empowered, inter alia, to make

all needful rules and regulations and generally direct the affairs of the Institute. (§ 23-49.7, Code) In short, it is a governmental institution for the dissemination of education. (§ 23-14, Code)

Obviously the Board of Visitors sets the broad policies and the president, its appointee, is its agent to carry out the same. In order to accomplish this the Board must delegate to the president much of its authority and has done so. With the approval of the Board, Dr. Oliver and the Administrative Council have adopted and are enforcing the rule in question. In other words, the Institute had apparent authority to adopt such a rule and the basic question is whether the rule violates any right of the individual male students affected by it. Included in this question is the issue of the reasonableness of the rule.

The Court finds that the rule is reasonable and in no sense arbitrary. Plain common sense dictates that every educational institution, public or private, must set up and require observance of standards of conduct for its personnel; administrative, faculty and students. To argue that "appearance" is not included within the terms "decorum" and "conduct" in these circumstances is to ignore the fact that orderly management of an institution necessarily includes the preservation of discipline therein.

For many years the Courts have followed the principle that the right to attend the educational institutions of a state is not a natural one, but is a benefaction of the law, and one seeeking to become a beneficiary of this gift must submit to such conditions as the law imposes as a condition precedent thereto. 15 Am. Jur. 2d, Colleges and Universities, § 16, p. 603. Where, as here, the power is delegated

to them by statute, university and college authorities may make the necessary and proper rules and regulations and such rules and regulations "are of the same force as would be a like enactment of the legislature, and their official interpretation by the university authorities is a part thereof." 15 Am. Jur. 2d, Colleges and Universities, § 22, p. 608.

It is clear, or should be clear, that university and college authorities stand *in loco parentis* concerning the physical and moral welfare and mental training of the students, and to that end they make any rule or regulation for the government or betterment of their students that a parent could for the same purpose. The courts are not disposed to interfere with the exercise of the discretion of such authorities unless the rules and purposes thereof are unlawful or against public policy, i. e., unauthorized, against common right, or palpably unreasonable. In sum, an individual in his capacity as a citizen may have the right to do many things which a college or university student cannot do without incurring the penalty of college laws. 27 R.C.L., Universities and Colleges, § 10, p. 141.

This Court has examined carefully the authorities cited by the attorney for the plaintiffs and those cited in behalf of the defendants. The plaintiffs take the position that the rule in question denies to them a right or rights guaranteed to them by the Constitution of the United States of America whether the rule is considered reasonable or unreasonable. Their main reliance is placed upon *Griswold v. State of Connecticut*, ... U. S. ....., 85 S. Ct. 1678, ... L. Ed. 2d .....

The Griswold decision dealt with the constitutionality of a criminal statute of the State of Connecticut which forbade the use of contraceptive drugs or devices by anyone within its borders. The United States Supreme Court, speaking through Justice Douglas with Justices Black and Stewart dissenting and the then Justice Goldberg concurring, held that the case concerned a relationship lying within the zone of privacy created by several fundamental constitutional guarantees as well as a right of privacy "older than the Bill of Rights—older than our political parties, older than our school system," and struck down the Connecticut statute.

But the situation here is not the same and the case is easily distinguished. The plaintiffs have failed to point to any right, whether to privacy, freedom of speech, freedom of association, etc., or any fundamental right falling within the "penumbra" of the catch-all Ninth Amendment, which would stand against the power of a college or university to prescribe reasonable rules and regulations governing the discipline of their students. The result might be different if each individual had an unqualified right to attend a state educational institution and if the operation of any such institution did not, by its very nature, require discipline and good order in order to accomplish its educational purpose, but such is not this case. There has been no showing here of any significant encroachment upon personal liberty sufficient to overcome the compelling subordinating interest.

The plaintiffs cite specific cases, most of which deal with secondary schools on the one hand or private colleges and universities on the other, in support of their contention that the "haircut-shave" rule is unreasonable. They men-

tion *State ex rel. Stallard* v. *White*, 82 Ind. 278 (Purdue University) as supportive of the proposition that a Board of Trustees cannot "make membership in a Greek letter fraternity or other college secret society a disqualification for admission as a student in the university" or require a member of such fraternity to pledge to disassociate himself from membership during his attendance at the university. However, the directly opposite result was later reached by the decision of the United States Supreme Court in *Waugh* v. *Board of Trustees of the University of Mississippi*, 237 U. S. 589, 35 S. Ct. 720, 59 L. Ed. 1131, involving a state institution.

Again, the plaintiffs cite *Kent* v. *Dulles*, 357 U. S. 116, 78 S. Ct. 1113, ... L. Ed. 2d ....., and quote therefrom the statement: " 'Our nation has thrived on the principle that, outside areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases.' " This statement may serve very well in a case involving the question of whether the Secretary of State could deny a passport to a communist, but is of little value in a case such as this now under consideration.

The Court deems it unnecessary to pursue further any exposition of the authorities cited, being of the opinion that the facts and pertinent authorities examined clearly dictate a distinction between the freedom to believe, which is absolute, and our freedom to exercise one's belief, which is subject to regulation for the protection of society. See *Reynolds* v. *U. S.*, 98 U. S. 145, the Mormon Bigamy case, and *Cooke* v. *Framburg*, 43 N. J. 514, 205 A. 2d 889. Having found that there has been no denial of any right

or rights possessed by the plaintiffs and that the rule of the Richmond Professional Institute is reasonable and predicated upon a meet and proper purpose, and further now finding no denial of due process of law in the administration of the rule, the Court holds that the prayer of the amended petition for a permanent injunction will be denied.

It will be observed that no mention has been made of the defendants' demurrer or motion to dismiss. For the record the demurrer of the defendants is overruled and their exception noted. As to the motion to dismiss, the Court has considered the petition as, in essence, a prayer for declaratory judgment with ancillary injunctive relief. In point of fact, however, certain actions by way of administrative appeal were taken by the plaintiffs after the first hearing in this Court. Further, two of the plaintiffs complied with the requirement, obtained haircuts and shaves and were admitted. In view of the fact that Mr. Marshall has not so acted, however, the right of appeal is not denied to him and the decision of this Court may be reviewed. The motion to dismiss the plaintiffs, Shoffner and Federico, is granted.

Counsel are requested to prepare, endorse and submit for entry a sketch for a decree, embodying the foregoing rulings of the Court, making this letter opinion a part of the record. The Court wishes to express its appreciation to Messrs. Carwile and Harris for their able presentations.

Very truly yours,

JOHN WINGO KNOWLES
Judge

APPENDIX D

VIRGINIA:

IN THE CIRCUIT COURT OF THE
CITY OF RICHMOND

---

the 20th day of December, 1965.

Case No. B-2932

NORMAN THOMAS MARSHALL, et al.,
Plaintiffs,

v.

DR. GEORGE OLIVER, et al.,
Defendants.

ORDER

This day came the plaintiffs and the defendants, by their respective counsel, upon the plaintiffs' bill for a permanent injunction, as amended by leave of Court on October 20, 1965, the demurrer, motion to dismiss and answer filed by the defendants and adopted as to the amended bill; upon the stipulation of counsel that the evidence adduced at the hearing upon the motion for a temporary injunction, on September 21, 1965, be considered as evidence upon the merits of the cause; upon the evidence adduced at the hearing held on October 20, 1965, and upon the arguments of counsel;

Whereupon, for reasons stated in the Court's opinion letter to counsel of November 23, 1965, a copy of which opinion is hereby made a part of the record, it is ADJUDGED, ORDERED and DECREED that the demurrer filed by the defendants is overruled, the motion to dismiss the plaintiffs Shoffner and Federico is granted and the prayer of the amended petition for permanent injunction is denied.

Exception of the plaintiffs is noted to the action of the Court in granting the motion to dismiss and denying the bill for injunction. Exception of the defendants is noted to the action of the Court in overruling the demurrer.

The plaintiffs having indicated their intention to petition the Supreme Court of Appeals of Virginia for appeal, it is ORDERED that execution of this judgment be suspended for a period of four (4) months from this date and, if such petition be filed, then thereafter until said Court shall have acted on said petition, provided that the plaintiffs, or someone for them, within thirty (30) days from this date, shall enter into bond with surety to be approved by the Clerk, in the penal sum of Five Hundred Dollars ($500.00), conditioned as the law directs.

Seen:

/s/ HOWARD H. CARWILE, p.q.
/s/ RICHARD N. HARRIS, p.d.

Enter: 12/20/65

/s/ JOHN WINGO KNOWLES
Judge

A Copy,

Teste: LUTHER LEBBY, JR., Clerk
by E. M. EDWARDS, D.C.

APPENDIX E

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 15, day of June, 1966.

The petition of Norman Thomas Marshall, Robert Debenham Shoffner and Salvatore Federico for an appeal from a decree entered by the Circuit Court of the City of Richmond on the 20th day of December, 1965, in a certain proceeding then therein depending, wherein the said petitioners were plaintiffs and Dr. George Oliver, President of Richmond Professional Institute, and others were defendants, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the issues in controversy are moot, doth reject said petition and refuse said appeal.

A Copy,

Teste:

H. G. TURNER

Clerk